

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

GREEN JOBWORKS, LLC/ACECO, LLC
(A JOINT EMPLOYER)
Employers

and

Case 05-RC-154596

CONSTRUCTION AND MASTER LABORERS'
LOCAL UNION NO. 11
Petitioner

ORDER

The Petitioner's Request for Review of the Regional Director's Decision and Direction of Election is granted as it raises substantial issues warranting review. Green JobWorks, LLC's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.

KENT Y. HIROZAWA, MEMBER

LAUREN McFERRAN, MEMBER

MEMBER MISCIMARRA, dissenting.

Contrary to my colleagues, I would deny the Petitioner's Request for Review of the Regional Director's Decision and Direction of Election. The Regional Director applied the standard recently announced in *BFI Newby Island Recyclery*, 362 NLRB No. 186 (2015), and found that the Petitioner failed to establish a joint-employer relationship between Green JobWorks, LLC (Green JobWorks) and ACECO, LLC. As explained in the *BFI* dissenting opinion jointly authored by former Member Johnson and me, I would adhere to precedent requiring proof that a putative joint employer actually exercises "direct and immediate" control over the essential terms and conditions of employment of individuals in the petitioned-for bargaining unit in a manner that is neither "limited" nor "routine." In my view, the Petitioner has failed to raise a substantial issue warranting review under the pre-*BFI* precedent.

Conversely, I believe there is a substantial issue regarding Regional Director's finding that it is appropriate to have a bargaining unit limited to the Green JobWorks demolition and asbestos-removal employees who are assigned to ACECO projects, excluding all other Green JobWorks demolition and asbestos-removal employees. The record indicates that all of these employees perform similar work, have similar skills, are subject to common employment policies, and receive the same benefits. For the reasons I stated in *Macy's, Inc.*, 361 NLRB No. 4, slip op. at 22–33 (2014) (Member Miscimarra, dissenting), I would apply the Board's traditional standards when resolving the unit-appropriateness issue, not the "overwhelming community of interest" standard set forth in *Specialty Healthcare and Rehabilitation Center of*

Mobile, 357 NLRB No. 83 (2011). Accordingly, I would grant the Request for Review filed by Green JobWorks regarding the appropriateness of the bargaining unit.

PHILIP A. MISCIMARRA, MEMBER

Dated, Washington, D.C., March 8, 2016.